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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ASSOCIATION OF IRRITATED
RESIDENTS, an unincorporated association,
and NATURAL RESOURCES DEFENSE
COUNCIL, INC.,)
Plaintiffs,)
v.)
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, STEPHEN L.
JOHNSON, in his official capacity as
Administrator of the United States
Environmental Protection Agency, and
WAYNE NASTRI, in his official capacity as
Regional Administrator for Region IX of the
United States Environmental Protection
Agency,)
Defendants.)

No. CV 08-00227 SC
**STIPULATION AND
[PROPOSED] ORDER**

1 WHEREAS, Plaintiffs Association of Irritated Residents and the Natural Resources
 2 Defense Council, Inc. filed a complaint, AIR v. EPA, Case No. CV 08-00227 SC, on January 14,
 3 2008, against the United States Environmental Protection Agency; Stephen L. Johnson, in his
 4 official capacity as Administrator of the United States Environmental Protection Agency; and
 5 Wayne Nastri, in his official capacity as Administrator for Region IX of the United States
 6 Environmental Protection Agency (collectively, "EPA"), pursuant to the citizen suit provision in
 7 section 304(a)(2) of the Clean Air Act, 42 U.S.C. § 7604(a)(2), alleging that EPA failed to
 8 perform nondiscretionary duties by not acting on certain state implementation plans within the
 9 time lines set forth in section 110(k)(2) of the Clear Air Act, 42 U.S.C. § 7410(k)(2);

10 WHEREAS, Plaintiffs' claims in AIR v. EPA (other than the costs of litigation and
 11 attorneys' fees) were resolved by a consent decree entered by the Court on September 12, 2008
 12 (Dkt. 21) (hereafter "Consent Decree");

13 WHEREAS, Plaintiffs and EPA wish to settle Plaintiffs' claims for costs of litigation,
 14 including attorneys' fees, in AIR v. EPA in order to avoid unnecessary litigation and without any
 15 admission of fact or law;

16 NOW THEREFORE, the parties, by and through their undersigned counsel, hereby
 17 stipulate to the entry of an order that:

18 1. The United States shall pay, within 90 days, \$33,815 to the Center on Race,
 19 Poverty & the Environment and \$10,751 to the Natural Resources Defense Council by electronic
 20 funds transfer in accordance with instructions provided to Defense counsel by Plaintiffs' counsel.

21 2. Any obligation of the United States to expend funds under this settlement
 22 agreement are subject to the availability of appropriations in accordance with the Anti-Deficiency
 23 Act, 31 U.S.C. § 1341. This settlement agreement shall not be construed to require the United
 24 States to obligate or pay funds in contravention of said Anti-Deficiency Act, 31 U.S.C. § 1341.

25 3. Plaintiffs agree that payment pursuant to Paragraph 1 within 90 days of the date
 26 on which the Court enters this Stipulation and Order (or after 90 days if Plaintiffs accept payment
 27 after that date) will constitute full and final payment of costs of litigation (including reasonable
 28 attorneys' fees) incurred by Plaintiffs in connection with AIR v. EPA prior to the Court's entry of

1 the Consent Decree and in negotiating this Stipulation and Order. Upon payment within 90 days
 2 of the date on which the Court enters this Stipulation and Order (or upon payment after 90 days if
 3 Plaintiffs accept payment), Plaintiffs release the United States, including EPA, from any claims
 4 regarding such fees and costs incurred by Plaintiffs in connection with AIR v. EPA prior to the
 5 Court's entry of the Consent Decree and in negotiating this Stipulation and Order. The payment
 6 pursuant to Paragraph 1 does not affect the right of Plaintiffs to seek to recover reasonable costs
 7 and attorneys' fees that Plaintiffs may incur to enforce the Consent Decree, nor does it affect the
 8 right of EPA to oppose any such request for fees and costs, as provided in Paragraph 13 of the
 9 Consent Decree.

10 4. In the event that the United States fails to pay the sum specified in Paragraph 1
 11 within 90 days of the date on which the Court enters this Stipulation and Order, Plaintiffs may
 12 file a motion with the Court for their costs of litigation (including reasonable attorneys' fees).
 13 Such motion shall be filed no later than 150 days after the date the Court enters this Stipulation
 14 and Order. The parties agree that, in litigation over such fee application, the United States
 15 reserves any defenses it may have to a fee application.

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 17 FOR THE DEFENDANTS:

RONALD J. TENPAS
 Assistant Attorney General
 Environment & Natural Resources Division

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 19 Dated: December 3, 2008

/s/ Rochelle L. Russell _____
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 23 FOR THE PLAINTIFFS:

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 25 Dated: December 3, 2008

/s/ Brent Newell _____
 BRENT NEWELL
 Center on Race, Poverty & the Environment
 47 Kearney Street, Suite 804
 San Francisco, CA 94108
 (415) 346-4179
 bnewell@crpe-ej.org
 Attorney for Association of Irritated Residents

1 Dated: December 3, 2008

/s/ Adriano Martinez
ADRIANO MARTINEZ
Natural Resources Defense Council, Inc.
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(310) 434-2300
amartinez@nrdc.org
Attorney for Natural Resources Defense Council

6 PURSUANT TO STIPULATION, IT IS SO ORDERED.

9 Dated: 12/5/08



1 CERTIFICATE OF SERVICE

2 I certify that on December 3, 2008, a true and correct copy of the foregoing
3 **STIPULATION AND [PROPOSED] ORDER** was served electronically via the Court's e-
4 filing system to Counsel of Record.

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7 /s/ Rochelle L. Russell
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9 ROCHELLE L. RUSSELL
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